ARIZONA'S OPEN MEETING LAW

INTRODUCTION

Arizona’s Open Meeting Law (OML) was enacted in 1962 and establishes the following policy regarding meetings of public bodies:

• meetings must be conducted openly;
• notices and agendas must contain information reasonably necessary to inform the public of the matters to be discussed or decided; and
• the OML should always be construed in favor of open and public meetings.¹

PUBLIC MEETINGS

The OML requires all meetings of any public body to be open to the public allowing all persons to attend and listen to the deliberations and proceedings.² A meeting is a gathering of a quorum of members of a public body, in person or through technological devices, at which the members discuss, propose or take any legal action, including deliberations. This includes a one-way electronic communication by one member of a public body sent to a quorum of the members of a public body that proposes legal action, or an exchange of electronic communications among a quorum of the members of a public body that involves a discussion of legal action concerning a matter that will likely come before the public body for action.³

Public bodies covered by the OML include: 1) all boards and commissions of the state including its political subdivisions; 2) all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state and political subdivisions whose Boards of Directors are appointed or elected by the state or political subdivision; 3) all quasi-judicial bodies; or 4) all standing, special or advisory committees or subcommittees of, or appointed by, such public body.⁴ Public body is also defined to include the Legislature,

¹A.R.S. § 38-431.09
²A.R.S. § 38-431.01 (A)
³A.R.S. § 38-431 (4)
⁴A.R.S. § 38-431 (6)
except that the OML and the Arizona Constitution, article IV, part 2, section 8, authorize the Legislature to adopt its own rules to address notice and agenda requirements. Therefore, meeting and notice requirements for the Legislature are addressed in the Senate and House of Representatives rules.5

Exceptions

The OML does not apply to the following meetings and entities:
1) judicial proceedings of courts;
2) a political caucus of the Legislature;
3) a conference committee of the Legislature, except that all conference committee meetings must be open to the public;
4) the Commissions on Appellate and Trial Court Appointments;
5) the Commission on Judicial Qualifications;
6) good cause exception and determinations and hearings conducted by the Board of Fingerprinting;6
7) homeowners associations;7
8) student disciplinary proceedings;8
9) insurance guaranty fund boards;9 and
10) hearings in prison facilities, except under certain conditions.10

The OML does not apply to a member of a public body when they express an opinion or discuss an issue with the public either: 1) at a venue, other than at a public meeting; 2) personally, through the media or other form of public broadcast or technological means if: a) the opinion or discussion is not principally directed at another member of the public body; and b) there is no concerted plan to engage in collective deliberation to take legal action.11

NOTIFICATION

Unless otherwise required, notice of all public meetings and executive sessions must be provided to members of the public body and to the general public at least 24 hours in advance.

Public bodies of this state, including governing bodies of charter schools, public bodies of the counties and school districts, and public bodies of the cities and towns must: a) conspicuously post a statement on their website stating where public notices of their meetings can be found, including the physical and electronic locations, and must give additional public notice as reasonable as to all meetings; and b) post all public meeting notices on their website and provide additional public notice as is reasonable as to all public meetings.12

For special districts formed according to Arizona Statute, if a statement or notice is not conspicuously posted on a website, then a statement must be filed with the clerk of the Board of Supervisors disclosing where all public meeting notices will be posted.13

The notice must also include an agenda that contains the date, time and place of the meeting, as well as a list of the specific matters to be discussed, considered or decided, or information on where to obtain an agenda.14

Only items specifically listed may be discussed, considered or decided at the meeting. A notice of an executive session is only required to contain a general description of matters to be considered.15

EXECUTIVE SESSIONS

A majority of the members constituting a quorum may vote publicly to convene an executive session.16 The general public is excluded from such a session and votes may not be taken. Any officer, appointee, employee and the Auditor General, in addition to any other individual necessary to carry out the executive session responsibilities, may attend.17

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5 A.R.S. § 38-431.08(D)  
6 A.R.S. § 38-431.08(A)  
8 A.R.S. 15-843(A)  
9 A.R.S. § 20-671  
10 A.R.S. § 38-431.08 (B)  
11 A.R.S. § 38-431.09  
12 A.R.S. § 38-431.02  
13 A.R.S. § 38-431.02(3)(C)  
14 A.R.S. § 38-431.02(G)(H)  
15 A.R.S. § 38-431.02(I)  
16 A.R.S. § 38-431.02(f)  
17 A.R.S. § 38-431.03
Disclosure of information from the executive session does not constitute a waiver of any privilege, including the attorney-client privilege. Members of a public body who are present in an executive session must be instructed in confidentiality requirements regarding discussion or consideration of records considered confidential by state and federal law.

An executive session or closed meeting may occur for discussion and consideration of any of the following:
1) personnel matters involving a specific individual;
2) confidential records;
3) legal advice provided by the public body’s attorney;
4) discussion or consultation in pending or contemplated litigation or settlement with the public body’s attorney;
5) discussion and instruction of designated representatives concerning negotiations with employer organizations;
6) international and interstate negotiations or negotiations by a city or town with a tribal council; or
7) instruction of designated representatives concerning negotiations for the sale, purchase or lease of real property.

CALL TO THE PUBLIC

Although the OML permits the public to attend public meetings, it does not require public participation in the public body’s discussions and deliberations. During an open call to the public, individuals may speak on any issue within the body’s jurisdiction. Members of the public body may respond to comments from those who addressed the body, may direct staff to review a matter or may ask that a matter be added to a future agenda. However, members may not discuss or take legal action on matters raised during an open call to the public unless they are noticed for discussion or legal action.

A person may record any part of a public meeting by tape recorder, camera or other similar means, if it does not interfere with the conduct of the meeting.

MINUTES AND RECORDINGS

All public bodies must take written minutes or record meetings, including executive sessions. Public and executive session meeting minutes must include the date, time and place of the meeting, members recorded as present or absent, and a general description of matters considered. Public session meeting minutes must also include an accurate description of all legal actions proposed, discussed or taken, and the names of members who proposed each motion. Executive session minutes must include an accurate description of all instructions given and such other matters as may be deemed appropriate by the public body. Laws 2018, Chapter 229 also added the requirement that minutes and recordings of public meetings include a record of how each member voted on legal actions.

The minutes or a recording of a meeting must be available for public inspection within three working days after a meeting takes place unless otherwise specified.

Public bodies of cities or towns with populations greater than 2,500 persons, excluding subcommittees and advisory committees, must post either a statement describing any legal action or a recording of the meeting on their website, if applicable, within three working days after a meeting takes place.

Subcommittees or advisory committees of cities or towns with populations greater than 2,500 persons must post either a statement describing any legal action or a recording of the meeting.
meeting on their website, if applicable, within 10 working days after a meeting takes place.

A city or town council, within two working days after approving meeting minutes, must post them on its website, if applicable.

VIOLATIONS

Any legal action taken by the public body during a meeting held in violation of the OML, are null and void.23 The Attorney General (AG) or the appropriate county attorney may begin an investigation of a violation on his own initiative or after receiving a signed, written complaint. The Office of the Ombudsman-Citizens Aide is also authorized to investigate complaints relating to public access laws, including open meetings, and must educate public officials and the public on such laws.24

If any person is affected, the AG or the county attorney may file an action to require compliance or prevent violations and obtain civil penalties, attorneys’ fees and court injunctions against the offending body or official. If the court finds that a public officer violated the OML, the court may remove the public officer from office. Additionally, the court may require the public officer or a person who knowingly aided, or both, to personally pay the attorneys’ fees.25

Laws 2018, Chapter 229 allowed the AG to commence a suit against an individual of a public body for a violation of OML, rather than just the public body as a whole. This codified a 2005 AG Opinion that concluded email communications amongst a quorum of a public body are subject to the same OML requirements that apply to all other forms of communication.26

In this case, the public body is prohibited from paying on behalf of, or reimbursing a civil penalty against whom the civil penalty has been imposed. However, a court may choose not to impose a civil penalty if the person liable for the violation objected to the action of a public body and the objection is noted in the record. Additionally, civil penalties for a first violation of OML have been removed, while third and subsequent violations have been increased to $2,500. The $500 civil penalty for a second violation is unchanged.27

A public body may ratify legal action previously taken in violation of the OML at a public meeting within 30 days after the discovery of the violation. The meeting must be noticed and include a detailed written description of the action to be ratified at least 72 hours in advance of the public meeting.28

Ratification is appropriate when the public body needs to validate retroactively a prior act to preserve the earlier effective date of the action. Ratification validates the prior action and does not eliminate the liability of the public body or others for sanctions under OML.29

ADDITIONAL RESOURCES

- Open Meeting Law Statutes
  Public Meetings and Proceedings
  Arizona Revised Statutes, Title 38, Chapter 3, Article 3.1

- The Arizona Open Meeting Law
  http://www.azoca.gov/open-meeting-and-public-records-law/open-meetings/

- Arizona Ombudsman-Citizens’Aide
  (602) 277-7292
  (800) 872-2879
  ombuds@azoca.gov
  http://www.azoca.gov/

- Arizona Attorney General
  Open Meeting Law Enforcement Team
  (602) 542-5025
  https://www.azag.gov/complaints/omlet

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22 A.R.S. § 38-431.05 (A)
23 A.R.S. § 38-431.07(A)
25 A.R.S. § 38-431.06
27 Laws 2018, Chapter 229 A.R.S. § 38-431.07
28 A.R.S. § 38-431.05